In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-120

FINIS P. ERNEST, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the price-fixing conspiracy of which it was convicted did not sufficiently affect interstate commerce to constitute a violation of Section 1 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1.

Petitioner and a co-defendant, Modern Asphalt Paving and Construction Co. (Modern), were found guilty by a jury on a one-count indictment alleging a combination and conspiracy to submit collusive bids to the City of East St. Louis, Illinois, for the construction of a sanitary sewer project. The court fined Modern $15,000 and petitioner $35,000. The court of appeals affirmed (Pet. App. A-1 to A-13).

The judgment of the court of appeals was entered on January 29, 1975. A petition for rehearing was denied on February 25, 1975. Petitioner's petition for a writ of certiorari was filed on July 10, 1975, and is therefore out of time under Rule 22(2) of the Rules of this Court.

Modern filed a timely petition for a writ of certiorari on March 27, 1975, which is presently before the Court. *Modern Asphalt Paving and Construction Co.* v. *United States*, No. 74-1219. Petitioner's contention that the price-fixing conspiracy of which it was convicted did not sufficiently affect interstate commerce to constitute a violation of Section 1 of the Sherman Act has been answered fully in our memorandum in opposition in that case, to which we respectfully refer the Court.[1]

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.

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[1]We are furnishing a copy of that memorandum to the petitioner here.